

### **REMARKS**

The foregoing amendments in claims 23 and 33 incorporate the description of  $k_1$  and  $k_2$  in the specification at page 47, line 2 from the bottom to page 48, line 1. These coefficients are determined provided the spherical aberration error signal SAES is stable when there is a change (deviation) in the focus position.

Applicants also note that "coefficient" is a basic mathematical term for a constant factor of an expression, as distinguished from a variable. Applicants further note that the term "coefficient" is used in the same manner as herein in issued U.S. Patent No. 6,822,209. Also, a like term "K" is used to relate, as here, photodetector electrical signals to spherical aberration "SA" in U.S. Patent No. 6,498,330. K is termed a constant in the Toshiba '330 patent. Clearly, these patents teach one skilled in the art that the coefficients  $k_1$  and  $k_2$  are constants, and specific numerical values can be determined for a given application.

Applicants therefore respectfully traverse the rejection of claims 23-29 and 33-39 under 35 USC 112, first paragraph.

While Applicants believe that the pending claims are patentably distinct from the cited claims of Tadano et al. U.S. Patent No. 6,822,209 and Yoshida U.S. Patent No. 6,498,330, they submit herewith a suitable terminal disclaimer. The double patenting rejection of claims 21-39 is therefore moot.


Application No. 09/994,024  
Amendment dated December 6, 2005  
After Final Office Action of October 6, 2005

Docket No.: 56692(70904)

In view of the foregoing amendments and remarks, as well as the accompanying terminal disclaimer, Applicants surge that the pending claims define patentable subject matter and are otherwise in condition for allowance.

Dated: December 6, 2005

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